



February 20, 2002

Mr. Jesus Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2002-0819

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159566.

The Office of the City Attorney for the City of Dallas (the "city attorney") received a request for "any and all complaints filed with the City of Dallas regarding towing complaints from July 2001 to the present date" as well as "copies of any citations issued to property owners for not having the proper signs in place when vehicles were towed." You indicate that the city attorney does not have any citations responsive to the latter part of the request. We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). On the other hand you indicate that the city attorney has released some of the information responsive to the request for complaints. However, you also contend that portions of the information responsive to the request for complaints are excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We begin by addressing your argument under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The informer's privilege has long

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

been recognized by Texas courts and is incorporated into the Public Information Act by section 552.101. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988).

You indicate that the submitted information contains the identities of individuals that reported violations of the Dallas City Code to the city's Transportation Regulation Division, which enforces the specific code provisions alleged to have been violated. You have also provided this office with copies of the specific code provisions at issue. Based on your arguments and our review of the submitted information, we agree that the city attorney may withhold the yellow highlighted information under section 552.101 in conjunction with the informer's privilege.

You also contend that portions of the submitted information are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle-title or registration issued by an agency of this state[.]

Consequently, we agree that you must withhold the blue highlighted driver's license and license plate information under section 552.130. We have also marked vehicle identification numbers that must be withheld under section 552.130.

Finally, you contend that a portion of the submitted information is excepted from disclosure under section 552.137 of the Government Code. Section 552.137 provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under

[the Public Information Act].”² Therefore, unless the relevant individuals have affirmatively consented to the release of their e-mail addresses, the city attorney must withhold the green highlighted e-mail address and additional e-mail address we have marked under section 552.137.

In summary, the city attorney may withhold the yellow highlighted information under section 552.101 of the Government Code in conjunction with the informer’s privilege. Furthermore, the city attorney must withhold the Texas driver’s license and license plate information you have marked as well as the vehicle identification numbers we have marked under section 552.130 of the Government Code. Finally, the city attorney must withhold the e-mail addresses marked under section 552.137 of the Government Code. The city attorney must release the remainder of the responsive information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

²The identical exception has been added as section 552.136 of the Government Code.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 159566

Enc: Submitted documents

c: Ms. Becky Oliver
c/o Mr. Jesus Toscano, Jr.
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201
(w/o enclosures)